

CHAPTER 3.31

Enhanced Sales Tax Incentive Program ("ESTIP")

3.31.010 Title.

There is hereby established within the City an Enhanced Sales Tax Incentive Program ("ESTIP"). (Ord. 294-04; Ord. 927-94)

3.31.020 Purpose.

The purpose of the ESTIP created hereby is to encourage the establishment and/or substantial expansion of retail sales tax generating businesses within the City, thereby stimulating the economy of and within the City, thereby providing employment for residents of the City and others, thereby further expanding the goods available for purchase and consumption by residents of the City, and further increasing the sales taxes collected by the City, which increased sales tax collections will enable the City to provide expanded and improved municipal services to and for the benefit of the residents of the City, while at the same time providing public or public-related improvements at no cost, or at deferred cost, to the City and its taxpayers and residents. (Ord. 294-04; Ord. 927-94)

3.31.030 Definitions.

As used in this Chapter and all Sections thereof, the following phrases shall have the following meanings:

Owner or *proprietor* shall mean the record owner of the property or operator of an individual business, or, in the case of a shopping center, the owner of the real property upon which more than one business is operated, provided that said owner (whether an individual, corporation, partnership or other entity) is the owner or lessor of the individual businesses operated thereon.

Sales tax shall mean the amount of City sales tax collected from the applicant. (Ord. 294-04; Ord. 927-94)

3.31.040 Participation.

Participation in ESTIP shall be based upon approval by the City Council of the City of Evans, exercising its legislative discretion in good faith. Any owner or proprietor of a newly established or proposed retail sales tax generating business or location, or the owner or proprietor of an existing retail sales tax generating business or location which is proposed to expand substantially, may apply to the City for inclusion within the ESTIP provided that the new or expanded business is reasonably likely to generate sales taxes of at least ten thousand dollars (\$10,000.00) in the first year of operation or expansion. (Ord. 294-04; Ord. 927-94)

3.31.050 City Council approval.

Approval by the City Council of an agreement implementing this ESTIP shall entitle the successful applicant to share in City sales taxes derived from applicant's property or business in an amount which shall not in any event exceed twenty-five percent (25%) of the City sales taxes; provided, however, that applicant may use said amounts only for public and/or public-related purposes such as those specified herein and which are expressly approved by the City Council at the time of consideration of the

application. The time period in which said sales taxes may be shared shall not commence until all public or public-related improvements are completed, and shall be limited by the City Council, in its discretion, to a specified time, or until a specified amount is reached. (Ord. 294-04; Ord. 927-94)

3.31.060 Uses for revenue to be public-related.

The uses to which said shared City sales taxes may be put by an applicant shall be strictly limited to those which are public or public-related in nature. For the purposes of this Chapter, public or public-related purposes shall mean public improvements, including but not limited to streets, sidewalks, curbs, gutters, pedestrian malls, street lights, drainage facilities, landscaping, decorative structures, statues, fountains, identification signs, traffic safety devices, bicycle paths, off-street parking facilities, benches, restrooms, information booths, public meeting facilities, and all necessary, incidental, and appurtenant structures and improvements, together with the relocation and improvement of existing utility lines, and any other improvements of a similar nature which are specifically approved by the City Council and upon the City Council's finding that said improvements are public or public-related improvements. (Ord. 294-04; Ord. 927-94)

3.31.070 Monthly increments for sales tax.

The City shall use the actual monthly City sales taxes collected by the applicant to determine the amount of shared City sales tax to be provided to the applicant, based upon the agreed terms; but in any event, the amount of the shared City sales tax shall not exceed twenty-five percent (25%) of the actual City sales tax received. The actual City sales taxes collected and used for determining that amount to be shared with the applicant shall not be from any dedicated sales tax such as the public safety sales tax, (currently at the rate of one-half of one percent [0.5%]). (Ord. 294-04; Ord. 927-94)

3.31.080 Account created.

It is an overriding consideration and determination of the City Council that existing sources of City sales tax revenues shall not be used, impaired, or otherwise affected by this ESTIP. Therefore, it is hereby conclusively determined that only City sales taxes generated by the properties described in an application shall be subject to division under this ESTIP. It shall be the affirmative duty of the City Treasurer to account for all such "sales taxes" separately from the sales taxes generated by and collected from the other sales tax generating uses and businesses within the City and to provide an accounting system which accomplishes the overriding purpose of this Section. It is conclusively stated by the City Council that this Chapter would not be adopted or implemented but for the provisions of this Section. (Ord. 294-04; Ord. 927-94)

3.31.090 Approval criteria.

A decision concerning an application for inclusion in this ESTIP shall be considered by the City Council, at a regularly scheduled City Council meeting, based upon the following criteria:

- A. The amount of City sales taxes that are reasonably to be anticipated to be derived by the City through the expanded or new retail sales tax generating business;
- B. The public benefits provided by the applicant through public works, public improvements, additional employment for City residents, etc.;
- C. The amount of expenditures that may be deferred by the City based upon public improvements to be completed by the applicant;

D. The conformance of the applicant's property or project with the Comprehensive Plan and zoning ordinances of the City;

E. The agreement required by Section 3.31.100 below having been reached, which agreement shall contain and conform to all requirements of said Section. Approval shall be by motion adopted by a majority of the entire City Council. (Ord. 294-04; Ord. 927-94)

3.31.100 Agreement required.

Each application for approval submitted to the City Council shall be subject to approval by the Council solely on its own merits. Approval of an application shall require that an agreement be executed by the owner and the City, which agreement shall, at a minimum, contain:

A. A list of those public or public-related improvements that justify the application's approval, and the amount that shall be spent on said improvements by the applicant;

B. The maximum amount of City sales taxes to be shared, and the maximum time during which said agreement shall continue, it being expressly understood that any such agreement shall expire and be of no further force and effect upon the occurrence of the earlier to be reached of the maximum time of the agreement (whether or not the maximum amount to be shared has been reached) or the maximum amount to be shared (whether or not the maximum time set forth has expired);

C. A statement that this is a personal agreement that is not transferable and that does not run with the land;

D. That this agreement shall never constitute a debt or obligation of the City within any constitutional or statutory provision;

E. A provision that any City sales taxes subject to sharing shall be escrowed in the event there is a legal challenge to this ESTIP or the approval of any application therefore;

F. An affirmative statement that the obligations, benefits, and/or provisions of this agreement may not be assigned in whole or in any part without the expressed authorization of the City Council, and further that no third party shall be entitled to rely upon or enforce any provision hereof;

G. Any other provisions agreed upon by the parties and approved by the City Council. (Ord. 294-04; Ord. 927-94)

3.31.110 City Council intentions.

The City Council has enacted this ESTIP as a joint benefit to the public at large and to private owners/business operators for the purposes of: providing the City with increased sales tax revenues generated upon and by properties improved as a result of this Program; public improvements being completed by private owners through no debt obligation being incurred on the part of the City, and allowing applicants an opportunity to improve properties that generate sales activities and make those properties more competitive in the marketplace and further provide to the applicant additional contingent sources of revenues for upgrading said properties. The City Council specifically finds and determines that creation of this ESTIP is consistent with the City's powers as a home rule municipal corporation, and that exercise of said powers in the manner set forth herein is in furtherance of the public health, safety and welfare. Notwithstanding any provision hereof, the City shall never participate in a joint venture with any

private entity or activity which participates in this ESTIP, and the City shall never be liable or responsible for any debt or obligation of any participant in ESTIP. (Ord. 294-04; Ord. 927-94)